



July 25, 2001

Ms. Stacy C. Ferguson  
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Attorneys at Law  
517 Soledad Street  
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OR2001-3228

Dear Ms. Ferguson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149791.

The San Felipe-Del Rio Consolidated Independent School District (the "district"), which you represent, received three requests for copies of mail-in ballots for the May 5, 2001 school board election. One requestor also asked for copies of "rejected" or "not counted" mail-in ballots and applications and another requestor asked for mail-in applications. You state that you are not asking for a decision for the applications because you believe the applications are open to the public. Therefore, we assume that you have allowed access to the applications. You claim that the requested mail-in ballots are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and your arguments.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 66.058(a) of the Election Code requires, with exceptions which do not appear to be applicable here, that precinct election records be preserved for 60 days after election day. Subsection (b) of section 66.058 requires that voted ballots and ballot stubs be preserved in a locked room in the locked ballot box or sealed envelope in which they are delivered to the general custodian of election records and that, "[e]xcept as permitted by this code, a ballot box containing voted ballots or an envelope containing ballot stubs may not be opened during the preservation period." *See also* Elec. Code §§ 213.007 (access to voted ballots for recounts), 221.008 (access to voted ballots for election contest), 1.013 (election records may be destroyed after preservation period unless election contest or criminal investigation or proceeding in connection with election is pending). Thus, voted ballots are not subject to disclosure under chapter 552 of the Government Code until the preservation period has run. The preservation period in the instant case is sixty days after the May 5, 2001 election. *See*

Elec. Code § 66.058(a). As this time period has now elapsed, the district must provide the requestor with access to or copies of the voted mail-in ballots. *See* Open Records Decision No. 505 at 4 (1988) (a request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

We note, however, that the requested “rejected” and “not counted” ballots, referred to as “spoiled” and “unused” ballots in the Election Code, are not required to be kept in a locked box as are voted ballots, but are only required to be preserved for 60 days after the election and then may be destroyed. *See* Elec. Code § 1.013 (providing that election records may be destroyed after the prescribed period time). Information in ballot box no. 4, which contains the spoiled and unused ballots, may be preserved in that box or by any other method chosen by the custodian. *See* Elec. Code § 66.058(f). The general custodian of election records or the custodian’s designee shall be present at all times when the records delivered in ballot box no. 4 are inspected. *See* Elec. Code § 66.057(b). Because section 66.058(b) of the Election Code specifically provides that voted ballots and ballot stubs must be maintained in a lock box but does not provide the same protection for spoiled and unused ballots, we conclude that the spoiled and unused ballots are not confidential by law. Thus, you must allow the requestor access to the spoiled and unused ballots.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

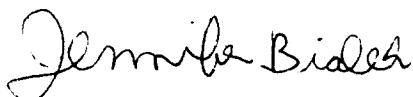
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek  
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Open Records Division

JHB/sdk

Ref: ID# 149791

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